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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/534,418

Filing Date: May 06, 2005

Appellant(s): DEL PRADO PAVON ET AL.

Brian S. Myers (Regn. No. 46,947)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 04/24/2009 appealing from the Office action mailed 12/04/2008.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 20030081547 A1

Ho, Jin-Meng

20030501

Sai et al. ["QoS Signaling for Parameterized Traffic in IEEE 802.11E Wireless LANs", by Sai Shankar et al., August 2002, pages 67-83, as in IDS filed on 05/06/2005].

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-9, 13-21 & 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Ho** (US Pub. 2003/0081547) in view of **Sai et al.** ("QoS Signaling for Parameterized

Traffic in IEEE 802.11E Wireless LANs", by Sai Shankar et al., August 2002, pages 67-83. as in IDS filed on 05/06/2005].

Regarding claims 1, 7, 13 and 19, Ho teaches a Hybrid Controller (HC) for an IEEE 802.11 wireless data communications system 100 supporting quality of service (QoS) enhancements (Abstract, pages 2 - 3, paragraph [0029]) comprising: a Station Management Entity (SME) 202 within the HC; and a Media Access Control (MAC) Sub Layer Management Entity (MLME) 201 within the HC and communicably coupled both to the SME 202 and to MLMEs 201 for wireless stations (WSTAs) 106, 109 participating in the IEEE 802.11 wireless data communications system 100 (Hybrid Controller - 257 comprises MLME coupled to a SME. WSTAs -255, both include a MLME (page 4, paragraphs [0041] - [0042], [0047], Fig 2b and its explanations, paragraphs 90-92).

Ho doesn't teach specifically, wherein, responsive to receipt of a Schedule QoS Action frame at the WSTA, the MLME within the WSTA generates an indication primitive for transmission to the SME within the WSTA. However, **Sai** teaches in an analogous art, that wherein, responsive to receipt of a Schedule QoS Action frame at the WSTA, the MLME within the WSTA generates an indication primitive for transmission to the SME within the WSTA, and wherein the request primitive includes a Schedule Element. (Pgs. 74-75: section 4.2 and Sec.2, Pgs. 69-70 *furthermore* Sec. 5.1, Pgs. 76-77) Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to including wherein, responsive to receipt of a Schedule QoS Action frame at the WSTA, the MLME within the WSTA generates an indication

primitive for transmission to the SME within the WSTA in order to provide a method of a centrally controlled contention based channel access in WLAN system.

Regarding claims 2 and 14, as applied to claims 1 and 13, Ho further discloses wherein the request primitive contains an address for the one of the participating WSTAs 106, 109 and a Schedule Element (Ho discloses QoS primitives consist of QoS action frame bodies. It's that the QoS request primitive consists of QoS action frame bodies that include the address of one of the WSTA and the Schedule Element (page 5, paragraphs, [0048] - [0050], page 7, paragraph [0073], Fig. 6a, paragraphs 90-92).

Regarding claim 3 and 15, as applied to claims 2 and 14, Ho further discloses wherein the SME 202 transmits the request primitive to the MLME 201 within the HC (page 4, paragraph [0050], pages 6 - 7, [0067], Fig. 5a).

Regarding claims 4 and 16, 26, as applied to claims 3 and 15, Ho further discloses wherein responsive to receiving the request primitive from the SME 202, the MLME 201 formulates a Schedule QoS Action frame containing the Schedule Element and transmits the formulated Schedule QoS Action frame (Ho discloses QoS primitives consist of QoS action frame bodies. It's that the QoS request primitive consist of QoS action frame bodies that include the Schedule Element [page 5, paragraphs [0048] - [0050], pages 6 - 7, Paragraphs [0066], [0067], Fig. 5a, paragraphs 90-92]).

Regarding claim 5 and 17, 27, as applied to claims 4 and 16, Ho further discloses the wireless data communications system 100 further comprising: a MLME 201 within the one of the participating WSTAs 106, 109, wherein the MLME 201 within the one of the participating WSTAs 106, 109, responsive to receipt of the Schedule QoS Action frame by the one of the participating WSTAs 106, 109, generates an indication primitive for transmission to an SME 202 within the one of the participating WSTAs 106, 109 (page 5, paragraph [0052], page 7, paragraphs [0067] - [0068], Fig. 5a, paragraphs 90-92).

Regarding claims 6 and 18, as applied to claims 5 and 17, Ho further discloses wherein the indication primitive includes the Schedule Element (Ho teaches QoS primitives include QoS action frame bodies. It's that the QoS indication primitive consists of QoS action frame bodies that include the Schedule Element (page 5, paragraphs, [0048], [0052], page 7, paragraph [0073], Fig. 6a, paragraphs 90-92).

Regarding claims 8 and 20, as applied to claims 7 and 19, Ho further discloses wherein the confirm primitive includes a result code corresponding to the result for the request primitive (page 5, paragraph [00511] , paragraphs 90-92).

Regarding claims 9 and 21, as applied to claims 8 and 20, Ho further discloses the MLME 201 within the HC transmits the confirm primitive to the SME 202 within the HC (page 5, paragraph [0051], page 7, paragraph [0068], Fig. 5a, paragraphs 90-92).

(10) Response to Argument**1. Relating to Claims 1, 13:**

In response to applicant's argument that there is no suggestion to **combine** the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Comment [D1]: So indicate what the suggestion or motivation was.

In this case, **SAI** teaches In order to provide adequate service, some level of quantitative and qualitative determinism in the IP services is required. This requires adding some smartness to the network to distinguish traffic with strict timing requirements on delay, jitter and loss from others. The goal of QoS provisioning is to provide some level of predictability and control beyond the current IP "best-effort" service. (Please see Abstract, and second paragraph on Pg. 68), which is in the same field of endeavor as **Ho**. Therefore, one skill in the art would recognize the amalgamation of the above two references is **proper**.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper **hindsight** reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the

time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In this case, **SAI** teaches In order to provide adequate service, some level of quantitative and qualitative determinism in the IP services is required. This requires adding some smartness to the network to distinguish traffic with strict timing requirements on delay, jitter and loss from others. The goal of QoS provisioning is to provide some level of predictability and control beyond the current IP "best-effort" service. (Please see Abstract, and second paragraph on Pg. 68), which is in the same field of endeavor as **Ho**. Therefore, one skill in the art would recognize the amalgamation of the above two references is proper.

Further, Appellant argues that Sai doesn't teach "wherein, responsive to receipt of a Schedule QoS Action frame at the WSTA, the MLME within the WSTA generates an indication primitive for transmission to the SME within the WSTA."

In view of the information, that **SAI** teaches, "the request primitive includes a Schedule Element." For example see (Sai, Sec. 5.1, Pgs. 76-77), it does instruct the "Signaling between SME and MLME as Each frame belonging to a traffic stream is served subject to the QoS parameter values provided to the MAC in a particular traffic **specification** (TSPEC) agreed upon between the HC and the participating QSTA(s) of the stream," *furthermore* "The MLME of the QAP has two QoS-related entities, namely, the bandwidth manager (BM) and the **scheduling** entity (SE). The BM is responsible for keeping track of the wireless bandwidth and the

scheduling entity is responsible for allocating TXOPs based on the requirements of different traffic streams” *furthermore* “Sent by SME to MLME to initiate a stream management frame with specified parameters. **This primitive requests addition or modification of a traffic stream with a specified peer MAC entity or entities capable of supporting parameterized QoS traffic transfer**” *furthermore* “Sent by SME to MLME to request the source QSTA to probe for the achievable transmission rate with the destination QSTA in the same QBSS. This primitive contains the frame size and the minimum physical layer transmission rate for the stream.” Thus, it is evidently, the explanations above is directed to telecommunications systems and methods to develop **a scheduling change process for a WSTA by using a set of primitives (including resources based on modification, addition and achievable transmission rates)**, that positively, edify by SAI. Hence, it is believed that SAI still teaches the claimed limitations.

2. Relating to Claims 2-9, 14-21, 26-27:

Because the dependent claims depend directly/indirectly, from one of the independent claims discussed above, as a result the response is the same justification as set forth above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Sharad Rampuria/

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